IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A No. 247 of 2003

Date of decision : 29.1.2007

State of Punjab & others

.....Appellants

through Mr.Sanjeev Sharma, Addl.A.G.Punjab

v.

Vasdev Singh,

.....Respondent

through Mr.G.C.Rattan, Advocate.

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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Challenge in this Letters Patent Appeal is to the judgment, passed by the learned Single Judge, dated 13.12.2002, directing the State of Punjab to pay family pension to the respondent w.e.f 1.1.1988, the date when the respondent's son passed away.

The respondent's son Dr. Kulwinder Singh joined PCMS-I on 23.5.1982. His services were regularized w.e.f 21.3.1983. Unfortunately, on 1.1.1988, he passed away. At the time of his death, he was unmarried and his parents were dependent upon him. His mother, however, passed

away. His father, respondent herein, had no income of his own and was fully dependent upon his son and, therefore, applied for a dependency certificate. Vide letter, dated 27.6.1988, the Deputy Commissioner, Hoshiarpur, issued a dependency certificate. The respondent thereafter sought grant of family pension, as also death-cum-retirement gratuity. The aforementioned claims were kept pending for want of legal heir certificate.

Aggrieved by the failure of the authorities to grant family pension and death-cum-retirement gratuity, the respondent approached this Court, by way of CWP No.10396 of 2001.

The State of Punjab opposed the respondent's claim on the plea that the definition of family, as contained in rule 6.71 clause (3) of the Punjab Services Rules Vol.II did not entitle the respondent to the grant of family pension. The gratuity was, however, paid to the respondent. The learned Single Judge, after a consideration of the respective stands, allowed the writ petition and directed the State of Punjab to pay family pension to the respondent w.e.f 1.1.1988.

Counsel for the appellants contends that the definition of family, as in rule 6.71 clause 3 of the Punjab Services Rules Vol.II did not include dependent parents on the relevant date and, therefore, the learned Single Judge erred in directing the State of Punjab to pay family pension.

Counsel for the respondent, on the other hand, contends that the learned Single Judge rightly granted the benefit of family pension to the respondent by holding that the revised definition of family, which came into force w.e.f 1.1.1996, would enure to the benefit of the respondent irrespective of the fact that the respondent's son died prior thereto. Counsel for the respondent has placed reliance upon a judgment of this Court,

rendered in LPA No.502 of 2002, National Insurance Company Ltd & Others vs Smt Gurdev Kaur & another, decided on 5.12.2006.

We have heard learned counsel for the parties, perused the paper book, and are of the opinion that the appeal is liable to be dismissed, in view of the judgment of this Court rendered in National Insurance Company Ltd & others' case (supra).

This Court, while considering the definition of family, as defined in rule 6.71, clause (3), Volume II, in the aforementioned case, held as follows :-

> "From the con-joint reading of aforesaid rules, it is manifestly clear that the provisions of these two paragraphs with regard to definition of family are paramateria in nature. Therefore, the learned Single Judge, has correctly come to the conclusion that the writ petition has to be allowed on the basis of the ratio of the Division Bench judgment in **Kharak Singh Kang's** case (supra). In Kharak Singh Kang's case, the Division of this Court had held as under:-
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> 7. It is not disputed that under the 1951 Scheme, the father and mother were included in the definition of 'Family' for the grant of Family Pension. It was specifically provided that the family " includes only wife, legitimate child, father or mother, dependent upon the

deceased for support". Even today, under Rule 6.16-B, the father and mother (including adopted parents.....) are included in the definition of family for the purpose of determining entitlement to the payment of death-cum-retirement gratuity. Similarly, they are also eligible for the grant of "Wound and other Extraordinary Pensions" as contemplated in Chapter VIII of the Punjab Civil Services Rules, Volume II. Under Rule 8.34, it has been specifically provided that" if the deceased government employee has left neither a widow nor a child, an award may be made to his father and his mother individually or jointly and in the absence of the father and the mother, to minor brothers and sisters....." It is, thus , clear that the parents have been included in the definition of `Family' for the purpose of grant of death-cum-retirement gratuity as well as for pension as contemplated under Chapter VIII. Yet they have not been included in the 'Family' under Rule 6.17 for the grant of family pension. No rationale or reason

has neither been disclosed in the written statement or at the time of arguments even though the case was adjourned twice at the request of the counsel for the appellants.

8. 'Next to God, thy parents' says the poet. Not even next to a judicially separated wife or husband is the mandate of Rule 6.17.Thosewho gave him and trained him up have no right to be included in his family? It does not appeal to logic. We cannot say-yet.

9. The purpose of the rules relating to family pension is to provide means of sustenance to the members of the family of the deceased employee. It is not unknown that not only the widow and children but very often even the aged parents are dependent on their son for their livelihood. The provision for family pension has been made to help such dependents. There appears to be no valid basis for excluding the parents from the list of persons who should be entitled to the grant of family pension on the death of the employee.

10. It is well settled that every executive

> action and in particular a legislative measure like a statutory rule governing the grant of pensioner benefits should meet the test of reasonableness as contemplated under Article 14 of the Constitution. Admittedly, the parents of a deceased employee are eligible for the grant of gratuity. They are also eligible for the grant of certain kinds of pension. In the case of an employee who is not even married, they are not entitled to the grant of family pension. The rule has no rationale. It is totally arbitrary. It is not reasonable. Rule 6.17 of the Punjab Civil Services Rules, Volume II cannot, thus, be sustained to the extent it excludes the parents of the deceased government employee from the concept of 'Family".

The controversy in the present case, namely, whether a dependent parent is entitled to family pension, is squarely covered by the aforementioned judgment, extract whereof has been reproduced herein above. Thus, the argument, raised by counsel for the appellant-State of Punjab that the respondent could not have been granted family pension, does not merit acceptance. The reasoning, adopted by the learned Single Judge, is just and fair and, therefore, does not call for any interference.

In view of what has been stated above, the present appeal is dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

January 29, 2007.
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